

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Deandre Michael Howard,

Plaintiff

v.

United States of America; Jimmy McKinny;
Mark Neira,

Defendants

Case No.: 2:22-cv-1004-JAD-DJA

**Order Granting Motion to Dismiss,
Denying Motion for Leave to Amend, and
Granting Motion to Stay Discovery**

[ECF Nos. 8, 11, 13]

This Federal Tort Claims Act (FTCA) case arises out of a June 29, 2020, car accident between Plaintiff Deandre Michael Howard and Federal Bureau of Investigation (FBI) employee Mark Neira. The government moves to dismiss this action as time-barred because Howard filed it more than six months after the agency denied his claim via letter on June 17, 2021, rendering it forever time-barred under 28 U.S.C. 2401.¹ Howard contends that the FBI's failure to include statutorily required notice-of-the-deadline language in that letter renders it a non-final decision incapable of triggering the six-month deadline, and he asks for leave to file an amended complaint to add this theory.²

The defendants have established that Howard, by the express allegations in this complaint, has pled himself out of a timely FTCA claim. 28 U.S.C. § 2401(b) states that “[a] tort claim against the United States shall be forever barred unless it is . . . begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the

¹ ECF No. 8.

² ECF No. 11.

1 claim by the agency to which it was presented.”³ Howard alleges in paragraph 5 of his
 2 complaint that the government “denied [his] claim on June 17, 2021, and thus deemed [sic] a
 3 final denial of the claim under 28 U.S.C. § 2675(a).”⁴ Because his June 24, 2022, inception of
 4 this case was far outside this six-month deadline, his claims, as pled, are plainly time-barred. So
 5 I grant the motion to dismiss them.

6 But Howard contends in his countermotion for leave to file an amended complaint that
 7 the June 17, 2021, letter wasn’t a final denial, and he asks for permission to amend his complaint
 8 to show that.⁵ I deny Howard’s motion because his failure to attach a proposed amended
 9 complaint as required by this district’s local rule 15-1(a) leaves me unable to determine whether
 10 Howard can overcome this time bar with new facts. But I do so without prejudice to his ability
 11 to file a new motion to amend by December 19, 2022, that explains how and why new
 12 allegations can do so *and* attaches the required proposed draft. And because the question of
 13 whether this case will ultimately move forward or be forever time-barred remains unresolved, I
 14 grant the defendants’ motion to stay discovery.⁶ Discovery is stayed unless and until Howard
 15 files a proper motion for—and this court grants—leave to amend.

16 IT IS THEREFORE ORDERED that the motion to dismiss [ECF No. 8] is **GRANTED**.
 17 **This case is dismissed without prejudice.**

18 IT IS FURTHER ORDERED that the plaintiff’s motion for leave to amend [ECF No. 11]
 19 is **DENIED without prejudice to his ability to file a new, proper motion for leave to amend**
 20 **by December 19, 2022.** If the plaintiff fails to do so, this court will deem that failure his

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 22 ³ 28 U.S.C. § 2401(b).

23 ⁴ ECF No. 1 at 2 (cleaned up).

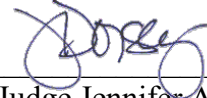
⁵ ECF No. 11.

⁶ ECF No. 13.

1 concession that he cannot plead facts to overcome the lateness of his claims and will enter
2 another order dismissing this case with prejudice as time-barred.

3 Finally, IT IS FURTHER ORDERED that the defendants' motion to stay discovery
4 **[ECF No. 13] is GRANTED. Discovery is stayed** unless and until Howard files a proper
5 motion for—and this court grants—leave to amend.

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U.S. District Judge Jennifer A. Dorsey
December 7, 2022